

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEPHEN R.F. KERN, JR.,

Plaintiff

Case No. 3:21-cv-00131-MMD-CLB

ORDER

v.

CALVIN JOHNSON,

Defendant

I. DISCUSSION

On March 17, 2021, Plaintiff, Plaintiff, an inmate in the custody of the Nevada Department of Corrections (“NDOC”), submitted a civil rights complaint under 42 U.S.C. § 1983. (ECF No. 1-1). On March 22, 2021, Plaintiff filed an application to proceed *in forma pauperis*. (ECF No. 3). Plaintiff’s complaint and Plaintiff’s application to proceed *in forma pauperis* are both incomplete.

Plaintiff’s Complaint

Upon review, the Court notes that Plaintiff did not sign the complaint. (ECF No. 1-1). Under Rule 11 of the Federal Rules of Civil Procedure, a plaintiff who is not represented by counsel is required to sign his complaint. Fed. R. Civ. P. 11(a). Because Plaintiff did not sign the complaint, the Court cannot consider it.

As such, the Court grants Plaintiff a **one-time extension** to submit a signed amended complaint to the Court on or before **May 21, 2021**. If Plaintiff chooses to file an amended complaint, he is advised that an amended complaint supersedes (replaces) the original complaint and, thus, the amended complaint must be complete in itself. *See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989). Therefore, a mere signature page will not be sufficient. Plaintiff should file the amended complaint on this Court’s approved prisoner civil rights form, and it must be entitled “First Amended Complaint.”

Plaintiff's Application to Proceed in Forma Pauperis

Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, an inmate seeking to begin a civil action in this Court may apply to proceed *in forma pauperis* in order to file the civil action without prepaying the full \$402 filing fee. To apply for *in forma pauperis* status, the inmate must submit all three of the following documents to the Court:

(1) a completed **Application to Proceed in Forma Pauperis for Inmate**, this Court's approved form (i.e. pages 1 through 3 with the inmate's two signatures on page 3),

(2) a **Financial Certificate** properly signed by both the inmate and a prison or jail official (i.e. page 4 of this Court's approved form), and

(3) a copy of the **inmate's prison or jail trust fund account statement for the previous six-month period**.

Plaintiff has not submitted a Financial Certificate (page 4 of this Court's application form) and an inmate account statement for the previous six-month period. Accordingly, the Court denies Plaintiff's application to proceed *in forma pauperis* (ECF No. 3) without prejudice because the application is incomplete.

The Court will grant Plaintiff a **one-time extension** until on or before **May 21, 2021**, to file either a fully complete application to proceed *in forma pauperis* containing all three of the required documents or pay the full \$402 filing fee. Absent unusual circumstances, the Court will not grant any further extensions of time.

If Plaintiff does not file either a fully complete application to proceed *in forma pauperis* with all three required documents or pay the full \$402 filing fee on or before **May 21, 2021**, this case will be subject to dismissal without prejudice for Plaintiff to file a new case with the Court when Plaintiff is able to either acquire all three of the documents needed to file a fully complete application to proceed *in forma pauperis* or pays the full \$402 filing fee.

A dismissal without prejudice means Plaintiff does not give up the right to refile the case with the Court, under a new case number, when Plaintiff is able to file a signed

1 amended complaint and has all three documents needed to submit with the application
 2 to proceed *in forma pauperis*. Plaintiff may also choose not to file an application to
 3 proceed *in forma pauperis* and instead pay the full filing fee of \$402 on or before **May 21,**
 4 **2021** to proceed with this case.

5 **II. CONCLUSION**

6 For the foregoing reasons, IT IS ORDERED that the Clerk of the Court will send to
 7 Plaintiff the approved form for filing a § 1983 complaint, instructions for the same, and a
 8 copy of his original complaint. (ECF No. 1-1). If Plaintiff files an amended complaint, he
 9 should use the Court's approved form and he must write the words "First Amended" above
 10 the words "Civil Rights Complaint" in the caption.

11 IT IS FURTHER ORDERED that if Plaintiff chooses to file a signed amended
 12 complaint, Plaintiff will file the signed amended complaint to this Court on or before **May**
 13 **21, 2021**.

14 IT IS FURTHER ORDERED that, if Plaintiff does not file a signed amended
 15 complaint on or before **May 21, 2021**, this case will be subject to dismissal without
 16 prejudice for Plaintiff to refile the case with the Court, under a new case number, when
 17 Plaintiff is able to file a signed amended complaint.

18 IT IS FURTHER ORDERED that Plaintiff's application to proceed *in forma pauperis*
 19 (ECF No. 3) is denied without prejudice to file either a new and fully complete application
 20 to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee.

21 IT IS FURTHER ORDERED that the Clerk of the Court will send Plaintiff the
 22 approved form application to proceed *in forma pauperis* by an inmate, as well as the
 23 document entitled information and instructions for filing an *in forma pauperis* application.

24 IT IS FURTHER ORDERED that on or before **May 21, 2021**, Plaintiff will either pay
 25 the full \$402 filing fee for a civil action (which includes the \$350 filing fee and the \$52
 26 administrative fee) or file with the Court:

- 27 (1) a completed **Application to Proceed in Forma Pauperis for Inmate** on this
 28 Court's approved form (i.e. pages 1 through 3 of the form with the inmate's two

1 signatures on page 3),

2 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail
3 official (i.e. page 4 of this Court's approved form), and

4 (3) a copy of the **inmate's prison or jail trust fund account statement for the**
5 **previous six-month period.**

6 IT IS FURTHER ORDERED that, if Plaintiff does not file a fully complete
7 application to proceed *in forma pauperis* with all three documents or pay the full \$402
8 filing fee for a civil action on or before **May 21, 2021**, this case will be subject to dismissal
9 without prejudice for Plaintiff to refile the case with the Court, under a new case number,
10 when Plaintiff has all three documents needed to file a complete application to proceed
11 *in forma pauperis* or pays the full \$402 filing fee.

12 DATED: March 22, 2021

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14 UNITED STATES MAGISTRATE JUDGE
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